



# DEMOCRATIC POLICY COMMITTEE **FACT SHEET**

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## **S. 6, the *Patients' Bill of Rights***

The focus of HMOs and other managed care plans on cutting costs and the emphasis of some on profits before patients' needs have undermined Americans' confidence in their health care. Over the past decade, the number of Americans in managed care plans has grown dramatically. It is estimated that by 1996, 75 percent of employees with employer-provided health insurance were covered by managed care.

In the 105th Congress, Democrats fought to provide millions of American families with quality health care as they worked to pass the *Patients' Bill of Rights*. This bill was supported by nearly 200 organizations representing doctors, nurses, patients' rights advocates, and consumer and labor groups. Unfortunately, the Republican majority refused to work with Democrats to pass strong, enforceable patient protections. Ultimately, they paid lip service to protecting patients, but proposed legislation that would create new loopholes to protect HMOs.

Despite the best efforts of the Republican leadership and the insurance industry to derail this legislation, Democrats are committed to keeping managed care reform at the forefront of Congressional debate. During the 106th Congress, the Democrats' number one legislative priority is the passage of the *Patients' Bill of Rights of 1999*.

Democratic Policy Committee  
United States Senate  
Washington, D.C. 20510-7050

Tom Daschle, Chairman  
Byron Dorgan, Co-Chairman

## **The *Patients' Bill of Rights* Offers Basic Protections**

The central objectives of the *Patients' Bill of Rights* are to ensure that:

- patients will have access to needed care;
- doctors are free to practice medicine without improper HMO and insurance company interference;
- a health plan's decision to deny care can be appealed by patients to an independent entity; and
- health plans are held accountable for their medical decisions that lead to harm.

### ***Providing Patients with Access to Care***

Many managed care patients face numerous obstacles as they seek access to doctors and needed health care services. These barriers to quality health care range from managed care companies' refusal to pay for emergency room services without prior authorization to restricting patients' access to specialists. The following provisions in the *Patients' Bill of Rights* will provide patients with access to the care they may need.

**Access to emergency room care.** The *Patients' Bill of Rights* allows patients to go to any emergency room during a medical emergency, without having to call a health plan for permission. Emergency room physicians can stabilize their patients and plan for a cure after stabilization without fear that health plans will deny coverage.

**Access to needed specialists.** The *Patients' Bill of Rights* ensures that patients who suffer from a chronic condition or a disease that requires care by a specialist will have access to a qualified specialist. If the HMO does not include specialists qualified to treat a condition, such as a pediatric cardiologist to treat a child's heart defect, it would have to allow the patient to see a qualified doctor outside its network at no extra cost. The *Patients' Bill of Rights* also allows patients with serious ongoing conditions to choose a specialist as their primary doctor or to see that doctor without having to ask their HMO for permission before every visit.

**Access to an OB/GYN.** The *Patients' Bill of Rights* allows a woman to have direct access to her OB/GYN without having to get a referral from her HMO. Women also would have the option to designate their OB/GYN as their primary care physician.

**Makes needed prescription drugs available to patients.** Currently, many HMOs do not cover prescription drugs that are not on their pre-approved list of medications. As a result, patients may not get the most effective medication needed to treat their condition. **S. 6** ensures that patients with drug coverage will be able to obtain needed medications, even if they are not on the HMO's approved list.

### ***Freeing Doctors to Practice Medicine***

**Accountants should not make medical decisions.** Yet some managed care organizations interfere with doctors' medical decisions and restrict open communications between patients and doctors. The *Patients' Bill of Rights* protects the doctor-patient relationship and ensures that doctors—not HMO accountants—drive medical decisions.

**Prohibits insurers from gagging doctors.** Patients have a right to learn from their doctor all of their treatment options, not just the cheapest. The *Patients' Bill of Rights* prevents HMOs from interfering with doctors' communications with their patients. Doctors cannot be penalized for referring patients to specialists or discussing costly medical procedures.

**Allows doctors to make decisions about their patients' care.** Under **S. 6**, HMOs are prevented from inappropriately interfering with doctors' judgments and cannot mandate drive-through procedures or set arbitrary limits on hospital lengths of stay. Doctors and nurses who advocate on behalf of their patients will be protected from retaliation by HMOs.

**Limits improper financial incentives.** Some managed care organizations use improper financial incentives to pressure doctors to deny care to their patients. The *Patients' Bill of Rights* limits insurance companies' ability to use financial incentives to get doctors to deny care. HMOs and insurers also would have to disclose to all patients information about the incentives used.

## ***Providing Patients With an Appeals Process***

When health plans deny needed care, patients and doctors deserve the right to appeal the decision and to receive a timely response. To protect patients and give them a meaningful right to appeal, the *Patients' Bill of Rights* establishes a sound and independent external appeals process.

**Timely, independent appeals process.** The *Patients' Bill of Rights* ensures that patients who are denied care by an insurance company can appeal the decision to an *independent* reviewer with medical and legal expertise, and receive timely decisions that are binding on the HMO.

## ***Holding HMOs Accountable for Their Actions***

Today, even if an HMO has been involved directly in dictating, denying, or delaying care for a patient, it can use a loophole in the *Employee Retirement Income Security Act of 1974* (ERISA) to avoid any responsibility for the consequences of its actions. ERISA was designed to protect employees from losing pension benefits due to fraud, mismanagement and employer bankruptcies during the 1960s, but has had the effect of leaving patients harmed by their HMOs' decisions to deny or delay care with no effective remedy. The *Patients' Bill of Rights* closes this loophole and ensures that like any other industry, HMOs can be held accountable for their actions. Since HMOs have a financial incentive to deny care to patients, they must bear responsibility if such denials cause harm.

## **Senate Democrats Work for HMO Reform**

At the heart of Americans' concerns with their health care are the fundamental issues of:

- getting the care they've been promised and have paid for;
- securing basic protections; and
- limiting HMO and insurance company interference with doctors' decisions.

The *Patients' Bill of Rights* addresses these basic issues and would restore balance between quality care and reasonable cost containment.